

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DAVID WALKER, et al.,

Plaintiff,

vs.

CITY OF OREM, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION IN LIMINE TO TAKE
JUDICIAL NOTICE OF WEATHER
CONDITIONS ON DECEMBER 29,
1998

Case No. 2:02-CV-253 TS

Plaintiff requests that the Court take judicial notice of the "weather conditions on the night of December 29, 1998 as set forth in the Weather Works Report on weather conditions for the night . . .¹ Plaintiff does not specifically state the facts sought to be judicially noticed except by example: "For example, the Weather Works Report lists the weather on December 29, 1998 as clear and with a temperature of between 35-41°."² The Court notes that such a nonspecific Motion is not helpful

¹Pl.'s Mem. at 3.

²*Id.*

because the Rules of Evidence require that if judicial notice is taken that “the Court shall instruct the jury to accept as conclusive any fact judicially noticed.”³ In order to do so, the Court would need to describe the exact fact(s) judicially noticed.

Defendant Peterson opposes the Motion on the ground that the information is subject to reasonable dispute and, in support, proffers a different report.⁴ Defendant Peterson does not, however, specify the manner in which the reports differ. Presumably it is in the cloud cover, which the report proffered by Peterson lists for December 29, 1998, at the Provo airport as 88% at 6 p.m. and 0% at 7 p.m.

Defendant Clayton opposes the Motion on the ground that the report proffered by Plaintiff is misleading in that its indication that generally there was moonlight with a 1/8 cloud cover does not accurately establish the disputed issue of fact on the actual light conditions at the time and place at issue. Defendant Clayton also opposes on the ground of lack of foundation.

Under Fed. R. Evid. 201, judicial notice may be taken of a particular fact if it is not subject to dispute because it is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”⁵ In this case, there is a disputed issue of fact regarding the light at the time of the events due to cloud cover. There is also a dispute as to whether “mostly clear”⁶ weather with a “1/8th of the sky . . . covered with a cloud” means that the sky was “clear.”

³Fed. R. Civ. P. 201(g).

⁴Def. Peterson’s Ex. 1, at 1.

⁵Fed. R. Evid. 201(b)(2).

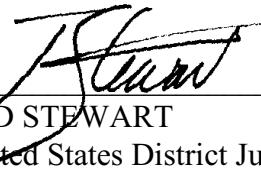
⁶Pl.’s Ex. 1, at 1.

It is therefore

ORDERED that Plaintiff's Motion in Limine to Take Judicial Notice of Weather Conditions (Docket No. 284) is DENIED.

DATED October 5, 2007.

BY THE COURT:



TED STEWART
United States District Judge